

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
TIME INC., HEARST CORPORATION, ADVANCE :
MAGAZINE PUBLISHERS INC., AMERICAN :
MEDIA, INC., HACHETTE FILIPACCHI MEDIA :
U.S., INC., THE MCGRAW-HILL COMPANIES, :
INC., NEWSWEEK, INC., SOURCE INTERLINK :
MAGAZINES, LLC, REED BUSINESS :
INFORMATION, A DIVISION OF REED :
ELSEVIER INC., VARIETY, INC., REED :
ELSEVIER PROPERTIES INC., BONNIER :
CORPORATION, ZIFF DAVIS PUBLISHING :
HOLDINGS INC., FORBES LLC, REIMAN MEDIA :
GROUP, INC., RD LARGE EDITION, INC., HOME :
SERVICE PUBLICATIONS, INC. and READER'S :
DIGEST LATINOAMERICA SA, :

Plaintiffs,

- against -

DARREN ANDREW BUDD, SALVEO LIMITED, :
CYBERNET COMMUNICATIONS, INC., :
SWITCHWORKS TECHNOLOGIES, INC.; :
HAMIDULLA GHUMAL ABBAS, YOAV :
SCHWARTZ, RICK ROSS and JOHN DOES 1-20, :

Defendants. :
----- X

08 Civ. 7392 (WHP)
ECF CASE

**DECLARATION OF KAI FALKENBERG IN SUPPORT OF PLAINTIFFS' MOTION
FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

I, KAI FALKENBERG, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the Editorial Counsel of Forbes LLC ("Company" or "Forbes"), one of the plaintiffs in the within infringement action. I am fully familiar with the facts stated herein. I submit this declaration in support of plaintiffs' motion for a temporary restraining order and preliminary injunction enjoining and restraining defendants Darren Andrew Budd ("Budd"), Salveo Limited ("Salveo"), Cybernet Communications, Inc. ("Cybernet"),

Switchworks Technologies, Inc. (“Switchworks”), Hamidulla Ghumal Abbas (“Abbas”), Yoav Schwartz (“Schwartz”), Rick Ross (“Ross”) and John Does 1-20 (collectively, “defendants”) from infringing plaintiffs’ copyrights, trademarks and trade dress.

2. Forbes is a Delaware corporation with its principal place of business at 60 Fifth Avenue, New York, New York, 10011.

3. Forbes owns and publishes several well-known magazines including Forbes magazine. Forbes magazine is distributed throughout the United States (including in New York), Canada and in other countries around the world.

4. Forbes’ practice with regard to obtaining copyright on these magazines generally is to apply for copyright registration on a quarterly basis for all of our magazines.

5. The purpose of this declaration is to set forth factual information and exhibits relevant to this injunction motion.

Mygazines.com Is Infringing Forbes’ Copyrights and Trademarks

6. I first became aware of the Mygazines.com website on or about July 24, 2008, at which time the website appeared to be fully populated with uniform, high-quality magazines. Without Forbes’ knowledge, consent or authorization, Mygazines.com was displaying full text reproductions of numerous magazines owned and published by Forbes.

7. Specifically, the full text of the following magazines owned and published by Forbes are being displayed by defendants on the Mygazines.com website without our consent:

(a) Forbes, November 12, 2007 Issue. Forbes has applied to the Copyright Office for registration of the November 12, 2007 issue in May 2008 (attached as Exhibit A) and expects for the application to be approved by the Copyright Office shortly.

(b) Forbes, May 5, 2008 Issue. Forbes has applied to the Copyright Office for registration of the May 5, 2008 issue in May 2008 (attached as Exhibit B) and expects for the application to be approved by the Copyright Office shortly.

(c) Forbes, May 19, 2008 Issue. Forbes has applied to the Copyright Office for registration of the May 19, 2008 issue in May 2008 (attached as Exhibit B) and expects for the application to be approved by the Copyright Office shortly.

(d) Forbes, June 2, 2008 Issue. Forbes has applied to the Copyright Office for registration of the June 2, 2008 issue in May 2008 (attached as Exhibit B) and expects for the application to be approved by the Copyright Office shortly.

(e) Forbes, June 16, 2008 Issue. Forbes has applied to the Copyright Office for registration of the June 16, 2008 issue in May 2008 (attached as Exhibit B) and expects for the application to be approved by the Copyright Office shortly.

(f) Forbes, June 30, 2008 Issue. Forbes has applied to the Copyright Office for registration of the June 30, 2008 issue in May 2008 (attached as Exhibit B) and expects for the application to be approved by the Copyright Office shortly.

(g) Forbes, July 21, 2008 Issue. Forbes has not yet applied for registration of its copyright in the July 21, 2008 issue because it was published very recently, but intends to do so.

(h) Forbes, August 11, 2008 Issue. Forbes has not yet applied for registration of its copyright in the August 11, 2008 issue because it was published very recently, but intends to do so.

8. Forbes also owns trademark rights in the titles of its magazines. Specifically, Forbes holds the following trademark registrations for its magazines:

(a) Forbes is registration 1,919,483 in International Classes 9 and 35 for online publication;

(b) Forbes is registration 1,141,299 in International Class 16 for print publication.

9. Forbes is the owner of common law trademark rights in its magazine titles as well, based on its use of its marks in commerce over the period of many years, its current circulation of over 900,000 and the wide recognition of those marks by consumers as an indicator of the source of Forbes' products. The marks are thus famous.

10. In addition, Forbes has rights to the trade dress of its magazines. Each magazine has a distinctive cover with a stylized logo that functions as a source indicator to consumers, and is non-functional. Mygazines.com displays the cover of Forbes magazine trade dress in those covers.

11. Forbes has not authorized or licensed defendants to post any content from its magazines on the Mygazines.com website

12. Indeed, Forbes operates a web site, Forbes.com, which includes content for each of its titles, and offers some of the content available in the print editions of its magazines through those sites. Forbes earns revenue from its website by, among other things, offering advertising space to advertisers in conjunction with Forbes' content. By offering the same content to consumers on its site, for free, Mygazines.com directly competes with Forbes' website.

Defendants' Conduct is Causing Forbes Irreparable Harm

13. This application is brought on by way of Order to Show Cause because expedited relief is necessary due to the irreparable harm Forbes is suffering and will suffer from defendants' continued infringement of Forbes' copyrights, trademarks and trade dress.

14. Defendants' conduct amounts to the wholesale theft of the content and appearance of Forbes' magazines. Hundreds of people contribute to the creative effort that results in each issue of Forbes. Defendants' conduct belittles that effort and should be immediately stopped.

WHEREFORE, for the foregoing reasons, together with those set forth in the accompanying summons and complaint, declaration of other plaintiffs, and memorandum of law, your deponent respectfully prays for a temporary restraining order and preliminary injunction enjoining and restraining defendants from distributing or displaying Forbes' magazines, and from inducing and encouraging its users to upload our content.

Dated: August 19, 2008

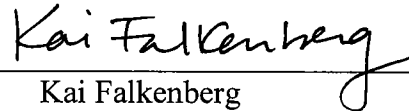

Kai Falkenberg

Exhibit A
To
Declaration of Kai Falkenberg

Copyright Office will not accept or change
 the number listed above the Copyright Office
 website at www.copyright.gov or the Copy
 right Office in call (202) 474-6000.



REGISTRATION NUMBER

EFFECTIVE DATE OF REGISTRATION

APPLICATION RECEIVED

ONE DEPOSIT RECEIVED

EXAMINED BY

CORRESPONDENCE ☐

DO NOT WRITE ABOVE THIS LINE.

TITLE ▼

ISSN ▼

Forbes

0015-6914

1
 List
 in order of
 publication

No
 previous
 registration
 under
 identical
 title

	Volume ▼	Number ▼	Issue date on copies ▼	Month, day, and year of publication ▼
1.	180	6	October 1, 2007	August 27, 2007
2.	180	7	October 8, 2007	September 3, 2007
3.	180	8	October 15, 2007	September 10, 2007
4.	180	9	October 29, 2007	September 24, 2007
5.	180	10	November 12, 2007	October 8, 2007
6.	180	11	November 26, 2007	October 22, 2007
7.	180	12	December 10, 2007	November 5, 2007
8.	180	13	December 24, 2007	November 19, 2007
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NAME AND ADDRESS OF THE AUTHOR/COPYRIGHT CLAIMANT IN THESE COLLECTIVE WORKS MADE FOR HIRE ▼

Forbes LLC, 60 Fifth Avenue, New York, NY 10011

FOR NON-U.S. WORKS: Author's citizenship ▼

USA

Domicile ▼

USA

Nation of publication ▼

USA

CERTIFICATION*: I, the undersigned, hereby certify that I am the copyright claimant or the authorized agent of the copyright claimant of the works identified in this application, that all the conditions specified in the instructions on the back of this form are met, that I have deposited two complimentary subscription copies with the Library of Congress, and that the statements made by me in this application are correct to the best of my knowledge.

Handwritten signature (X) Maria Rosa CartolanoTyped or printed name Maria Rosa Cartolano, Asst. General Counsel

PERSON TO CONTACT FOR CORRESPONDENCE ABOUT THIS CLAIM

Name Carol Katz Daytime telephone 212.620-2404

Address (if other than given below)

Fax (212) 620-1890Email ckatz@forbes.com

Certificate
 will be
 mailed
 in window
 envelope
 to this
 address:

Name ▼

Maria Rosa Cartolano, Assistant General Counsel, Forbes LLC

Number/Street/Apt ▼

60 Fifth Avenue

City/State/Zip ▼

New York, NY 10011

DEPOSIT ACCOUNT

Account number 93171Name of account Forbes Media LLC

MAIL TO:
 Library of Congress
 Copyright Office
 101 Independence Avenue SE
 Washington, DC 20559-6000

*17 USC §506(e): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

Exhibit B
To
Declaration of Kai Falkenberg

Copyright notice may not appear in change.
For copyright 2008, check the Copyright Office
website at www.copyright.gov with the Copyright
Office in call (202) 707-5900



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EXAMINED BY

CORRESPONDENCE ☐

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Forbes

0015-6914

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title

	Volume ▼	Number ▼	Issue date on copies ▼	Month, day, and year of publication ▼
1.	181	7	April 7, 2008	March 3, 2006
2.	181	8	April 21, 2008	March 17, 2008
3.	181	9	May 5, 2008	March 31, 2008
4.	181	10	May 19, 2008	April 14, 2008
5.	181	11	June 2, 2008	April 28, 2008
6.	181	12	June 16, 2008	May 12, 2008
7.	181	13	June 30, 2008	May 26, 2008
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USA

USA

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Domicile ▼

Nation of publication ▼

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Handwritten signature (X) Maria Rosa CartolanoTyped or printed name Maria Rosa Cartolano, Asst. General Counsel

PERSON TO CONTACT FOR CORRESPONDENCE ABOUT THIS CLAIM

Name Carol KatzDaytime telephone (212) 620-2404

Address (if other than given below)

Fax (212) 620-1890Email ckatz@forbes.com

Certificate
will be
mailed
in window
envelope
to this
address:

Name ▼
Maria Rosa Cartolano, Assistant General Counsel, Forbes LLC
Number/Street/Apt ▼
60 Fifth Avenue
City/State/Zip ▼
New York, NY 10011

DEPOSIT ACCOUNT

Account number 93171Name of account Forbes Media LLC

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